ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CACR06-915

June 13, 2007

LAURIE ANN JAMMETT
APPELLANT

AN APPEAL FROM BENTON COUNTY CIRCUIT COURT
[CR2006-42-1]

V.

HON. TOM KEITH, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Appellant Laurie Ann Jammett pleaded guilty to two counts of delivery of a controlled substance and possession of a controlled substance with intent to deliver. She appeals from her conditional guilty plea, arguing that the trial court erred in denying her motion to suppress evidence seized pursuant to a search warrant because the affidavit supporting the search warrant lacked sufficient indicia of the confidential informant's reliability and because her arrest was not supported by probable cause. We affirm.

Appellant was arrested and the search warrant in this case was issued after a confidential informant made two controlled drug buys at appellant's home in Rogers, Arkansas. At the suppression hearing, Detective Brian Culpepper of the Rogers Police Department testified that he was contacted by a person who claimed he could purchase methamphetamine from appellant. Following the usual procedure of performing a background check, Culpepper used the informant to set up the controlled drug buys, which were made on October 17, 2005, and

October 20, 2005.

After the second controlled drug buy was made, Culpepper submitted an affidavit for a search warrant for appellant's residence at 804 East Kara Lane, asserting that controlled substances, ledgers, drug paraphernalia, and money from the sale of illegal drugs were being concealed on that property. In the affidavit, Culpepper explained the following. The informant contacted Culpepper on October 17, 2005, and told Culpepper that he could purchase one ounce of methamphetamine from a female known to the informant as "Laurie" for $1600. The informant gave the officer directions to "Laurie's" residence. According to the affidavit, due to "previous drug information," the police were "familiar with a female residing in the same area" that the informant described. When the officers picked up the informant to make the first buy, Culpepper showed the informant a photograph of appellant and the informant positively identified appellant as the person preparing to sell methamphetamine.

The informant was searched before the buy, and no drugs or contraband were located on his person. The informant was given $1600 in buy money that had been photocopied, and he was equipped with a recording device. Culpepper dropped the informant off at 804 East Kara Lane, parked down the street, and observed the informant enter the residence. Culpepper was followed by Detectives Kelly and Andy Lee, Jr. According to the affidavit, "money and drug talk could be heard over the recording device" but Culpepper did not explain in the affidavit that *he* did not personally hear the transaction. Approximately ten minutes after the informant entered the residence, he returned to Culpepper's vehicle and was searched. He turned over one ounce of methamphetamine to Culpepper; he was searched and no other drugs or contraband were found.

As to the second buy, the affidavit recited that on October 20, 2005, the informant

stated that he could purchase one ounce of methamphetamine from Laurie Jammett, for the same price of $1600. The informant further told Culpepper that the informant was to be at the residence between 11:30 a.m. and 11:45 a.m. The same routine was followed by which the informant was searched, was provided $1600 in buy money, and was equipped with a recording device. (The affidavit did not indicate that this money was photocopied). Again, Culpepper dropped the informant off at 804 East Kara Lane and was followed by Detective Kelly, Detective Renfrow, and Detective Sergeant Jonathan Best. The affidavit indicated that "the CI could be heard conversing with a female" over the recording device and that "the CI could be heard counting money" over the recording device but, again, did not specify that Culpepper did not hear the transaction.

Approximately nine minutes after entering the residence, the informant returned to Culpepper's vehicle. Again, he delivered one ounce of methamphetamine but no other drugs or contraband were found on his person. In addition, the informant told Culpepper that while he was in the residence, appellant was smoking methamphetamine out of a glass pipe. He also told Culpepper that a male named Julio was coming by the residence at 12:00 p.m. to drop off more "dope." Based on these facts, Culpepper applied for a search warrant.

Officer Best kept appellant's residence under surveillance while Culpepper attempted to get the search warrant. At approximately 2:04 p.m., before the search warrant was issued, appellant and two other persons were stopped after they left the residence. Because Best was in an unmarked van and could not make a traffic stop, he requested that a marked vehicle conduct the traffic stop. Officer Stanley Cain, who was patrolling in the area, responded to the call. Best informed Cain that probable cause existed to arrest appellant for delivery of a controlled substance and requested that appellant be detained. Cain stopped the vehicle, which appellant was driving. He ordered appellant to exit the vehicle and to put her hands

on top of it. He informed her that she was being detained and that an officer was coming to speak with her. Cain then handcuffed appellant, who was arrested at 2:05 p.m.

Very soon thereafter, Detective Jones and other officers arrived. Appellant's car was searched but no contraband was found in the vehicle. Appellant had $730 on her person, $330 of which was money from the second buy. (The money from the first buy was never recovered.)

The search warrant was issued at 2:10 p.m. and the officers entered appellant's home at approximately 2:20 p.m. They found marijuana, a plastic baggie containing marijuana residue, and a small baggie containing a small amount of suspected methamphetamine. Due to information that appellant provided while the search was being conducted, the officers also found two ounces of methamphetamine in the false bottom of a hair-spray can.

Appellant was charged with two counts of delivery of a controlled substance and one count of possession of a controlled substance with intent to deliver. During the suppression hearing, Culpepper admitted that the only information that was provided to the magistrate was the information contained in the affidavit. Appellant raised the following arguments: 1) the search warrant was faulty because it contained no specific facts establishing the reliability of the informant and because certain facts were based on hearsay; 2) the arrest was invalid because the arresting officer did not personally possess reasonable cause to arrest and was merely instructed to detain, not arrest appellant; and 3) appellant's statement was involuntary.

The trial court denied the motion to suppress, noting that this was not a case in which a search warrant was issued based purely on hearsay information because the informant personally observed the drug transactions and because the officer personally observed the informant entering and leaving the residence and received the contraband immediately after each transaction. Therefore, it determined that the affidavit stated sufficient facts to support

issuance of the search warrant. As to the validity of appellant's arrest, the trial court ruled that whether or not appellant was detained or arrested, reasonable cause clearly existed to arrest her, which was conveyed to the arresting officer. The court did not specifically determine whether appellant's statement was voluntary.

Following the denial of her motion to suppress, appellant entered a conditional guilty plea pursuant to Arkansas Rule of Criminal Procedure 24.3, reserving in writing her right to appeal the denial of her motion to suppress. She was sentenced to serve twenty-five years in prison, to be followed by a twenty-five-year suspended sentence.

I. Search Warrant

Appellant first argues that the trial court erred in denying her motion to suppress the evidence seized from her home as a result of the search warrant. When reviewing the denial of a motion to suppress, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to a reasonable suspicion or probable cause, giving due weight to inferences drawn by the trial court. *See Davis v. State*, 351 Ark. 406, 94 S.W.3d 892 (2003). In deciding whether to issue a warrant, the magistrate should make a practical, common-sense determination based on the totality of the circumstances set forth in the affidavit. *See Stanton v. State*, 344 Ark. 589, 42 S.W.3d 474 (2001). Thus, when reviewing the issuance of a search warrant, we apply the totality-of-the-circumstances analysis when determining whether the issuing magistrate had a substantial basis for concluding that probable cause existed. *See Langford v. State*, 332 Ark. 54, 962 S.W.2d 358 (1998).

Arkansas Rule of Criminal Procedure 13.1 governs the issuance of search warrants. Rule 13.1(b) generally requires that where an affidavit or testimony is based in whole or in part on hearsay, the affiant shall set forth particular facts bearing on the informant's reliability.

However, Rule 13.1(b) also provides that the failure of the affidavit or testimony to establish the veracity and bases of knowledge of persons providing information to the affiant shall not require that the application be denied if the affidavit or testimony, viewed as a whole, provides a substantial basis for a finding of reasonable cause to believe that things subject to seizure will be found in a particular place. We affirm the denial of appellant's motion to suppress in the instant case because the facts in the affidavit, as a whole, provided a substantial basis for determining that reasonable cause existed to believe that items related to the sale of controlled substances would be found in appellant's house.

This is not a case in which the search warrant was based on pure hearsay or in which the reliability of the informant was completely unknown. The informant's information was corroborated by his personal observations and by the personal observations of Officer Culpepper. The controlled buys were corroborated by Officer Culpepper's participation and observation, in that he dropped the informant at the residence, provided the buy money, and immediately thereafter received the precise amount of drugs that the informant indicated he could purchase from appellant. Further, the transactions themselves were ~~recorded~~ monitored. Officer Culpepper's account of the drug buy, alone, was sufficient to establish probable cause to search appellant's home for drugs and other contraband. *See Langford v. State*, *supra* (holding that the officer's account of a controlled buy, made by an informant, was, by itself, sufficient to establish probable cause for issuance of a search warrant).

For the same reasons, we reject appellant's argument that the search warrant was improperly issued because there were no facts in the affidavit to support that there was any drug-related evidence at the residence beyond the drugs that the informant claimed to have purchased. Thus, the magistrate had a substantial basis for concluding that reasonable cause existed to believe that items relating to the sale of methamphetamine would be found at

appellant's residence.[1]

II. Arrest

Appellant also argues that the trial court erred in denying her motion to suppress because her arrest was invalid since it was not based on reasonable cause. She maintains that because her arrest was invalid, the custodial statements she made directing police to the methamphetamine hidden in the hair-spray can should have been suppressed pursuant to the fruit of the poisonous tree doctrine. *See Wong Sun v. United States*, 371 U.S. 471 (1963).[2]

Arkansas Rule of Criminal Procedure 4.1(a)(i) provides that a law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that the person has committed a felony. Reasonable cause or probable cause for a warrantless arrest exists when facts and circumstances within an officer's knowledge are sufficient to permit a person of reasonable caution to believe that offense has been committed by the person to be arrested, and such cause does not require degree of proof sufficient to sustain conviction. *See Hudson v. State*, 316 Ark. 360, 872 S.W.2d 68 (1994). Further, Rule 4.1(d) provides that a

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[1]Additionally, appellant seems to make a *Franks*-type argument that the affidavit was misleading because of information that was omitted, such as the specific details of the "drug and money talk" that was overheard on the recording device or the fact that two other persons were present at appellant's residence. She also points to what she asserts to be contradictions in the affidavit and Officer Culpepper's testimony. However, her argument is barred because she did not develop it below and did not secure a ruling on that issue. *Cf. State v. Rufus*, 338 Ark. 305, 993 S.W.2d 490 (1999) (considering a argument based on *Franks v. Delaware*, 438 U.S. 154 (1978), where the parties failed to cite to that case but argued that the affidavit was misleading due to omitted information and the trial court made the necessary *Franks* findings).

[2]Appellant also argues that the methamphetamine found in the hair-spray can should be suppressed because her custodial statements directing the police to that evidence were involuntary. However, even if appellant's statement was involuntary, the methamphetamine seized in the hair-spray can would be admissible under the inevitable discovery doctrine. *See McDonald v. State*, 354 Ark. 216, 119 S.W.3d 41 (2003). Here, Culpepper, a veteran narcotics detective, testified that he always checked cans when he came across them, that he had seen drugs hidden in that manner before, and that he would have found the drugs in the hair-spray can even without appellant's help.

warrantless arrest by an officer not personally possessed of information sufficient to constitute reasonable cause is valid where the arresting officer is instructed to make the arrest by a police agency that collectively possesses knowledge sufficient to constitute reasonable cause.

Relying on *Friend v. State*, 315 Ark. 143, 865 S.W.2d 275 (1993), and *Kaiser v. State*, 296 Ark. 125, 752 S.W.2d 271 (1988), appellant argues that her arrest was invalid because no probable cause to arrest existed or alternatively, because Officer Cain, the arresting officer, had no personal knowledge of the facts supporting probable cause to arrest. We disagree.

First, the same facts that supported issuing a search warrant based on the controlled drug buys also provided probable cause to arrest appellant. Second, *Friend* and *Kaiser* are inapposite. In *Friend,* the police did not instruct the arresting officers to arrest the defendant; they merely requested other law enforcement officials to stop the defendant and hold him for questioning in a homicide investigation. Thus, the *Friend* court held that the arrest was unlawful because the arresting officers in that case had absolutely no knowledge of any facts that would give them probable cause to arrest the defendant. Unlike the arresting officers in *Friend*, the arresting officer here had actual knowledge of the basis for the arrest.

In *Kaiser*, the forfeiture of the defendant's car was reversed where he was stopped based on information received from the Missouri police that a reliable informant told them the defendant had marijuana and cash in his vehicle. The *Kaiser* court reversed because the State presented no information regarding the reliability of the tip received by the Missouri officers. Here, the basis for detaining appellant was made clear to Officer Cain — Officer Culpepper told Cain that he had probable cause to arrest appellant for selling a controlled substance. Moreover, the basis for Culpepper's belief that probable cause existed in the instant case was not a tip from an informant whose reliability had not been established but was based on Culpepper's personal knowledge of the two controlled buys, the latter of which was made

barely over two hours before appellant was arrested.

Nonetheless, appellant asserts that because Cain was not instructed to *arrest* her, the arrest was invalid under Rule 4.1(d). However, that rule applies when the arresting officer does not have sufficient information regarding probable cause to arrest—here, Cain was personally made aware of the basis for appellant's impending arrest. Clearly, the arrest was proper under Rule 4.1(a) because, based on Culpepper's reasonable belief that appellant had sold a controlled substance, Cain had reasonable cause to believe that appellant had committed a felony. *See, e.g., Rucker v. State*, 320 Ark. 643, 899 S.W.2d 447 (1995) (distinguishing *Friend* on the basis that a "be on the lookout message" that included information that the defendant was passing forged checks and that the owner of the vehicle the defendant was probably driving was dead provided officers sufficient information to arrest the defendant).

Affirmed.

HART and BAKER, JJ., agree.